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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
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RECORD OF ORAL HEARING
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TOSHIFUMI YAMAMOTO

Appeal 2009-003325
Application 09/926,434
Technology Center 2600

Oral Hearing Held: August 12, 2009

Before KENNETH W. HAIRSTON, JOHN C. MARTIN and BRADLEY W. BAUMEISTER, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

JAMES J. KULBASKI, ESQUIRE
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
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The above-entitled matter came on for hearing on Wednesday, August 12, 2009, commencing at 10:45 a.m., at The U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Ashorethea Cleveland, Notary Public.

1 THE USHER: Good morning. Calendar Number 38, Appeal Number
2 2009-003325. Mr. Kulbaski.

3 JUDGE HAIRSTON: Good morning, counselor.

4 MR. KULBASKI: Good morning. My name is James Kulbaski. I
5 am here on behalf of the Applicant.

6 This morning's case is very straightforward. It relates to a mobile
7 communication terminal. This type of terminal is typically used with a
8 bluetooth protocol but other protocols may be used.

9 There's one independent claim, claim 24. It recites a mobile
10 communication terminal and it includes a number of elements, a first
11 interface for making radio communication with a mobile communication
12 network. So, in this case, the phone can call to the wireless provider. A
13 second interface for making radio communication with the car mounted
14 electronic device and that's essentially a bluetooth type interface which is
15 part of the cell phone; and again, other communication protocols can be used
16 for that; a connection control section for controlling connection to the car
17 mounted electronic device, and then the manner in which this device
18 operates as set forth in the last paragraph.

19 The feature which I'll be talking about today pertains to the last four
20 lines which state that the connection control section disconnects the
21 connection with the car mounted electronic device and sets the
22 communication mode in its own communication mode if no packet which is
23 periodically output from the car mounted electronic device for
24 acknowledgement of the connection is received for a predetermined time
25 period.

1 There are two rejections which are being appealed, both prior-art
2 rejections, 103 obviousness rejection and the 102 anticipation rejection.

3 The 103 rejection is in view of three references, Chennakeshu, Raith
4 and Chen; and as explained on page six of the Appeal Brief, the Examiner
5 acknowledges that Chennakeshu and Raith don't disclose the feature of
6 disconnection as claimed.

7 So, for this feature, he relies on Chen; and it says that Chen discloses
8 the feature of disconnected electronic device and references column nine,
9 line 51 through column ten, line 25.

10 So, for the obviousness rejection, the Examiner is admitting that a
11 feature is not in the first two references and relies on a specific portion of
12 Chen.

13 If you look through column nine, line 51 through column ten, line 25,
14 it does not have the feature explained to be missing from the other
15 references.

16 What is disclosed at the top paragraph of column ten is that -- there's
17 an acknowledgement packet sent. Every eighth packet -- if there's a
18 disconnect, there's -- no acknowledgement packets sent. No
19 acknowledgement means no more new packets are transmitted.

20 So, the 103 rejection appears to be clearly erroneous. I just don't see
21 how any feature related to the claim limitation that we're talking to is in that
22 prior art. It was addressed with the Examiner and he could do nothing more
23 than point to a couple of paragraphs in the reference and they don't have the
24 relevancy.

1 The second rejection is a 102 anticipation rejection in view of
2 Larsson. Again, the feature which is missing from Larsson is the manner of
3 disconnection.

4 What the Examiner relies on throughout prosecution and the Appeal
5 Brief is column seven, lines 35 through 41; and the claim makes clear that
6 the disconnection is controlled by the mobile phone, and what the Examiner
7 is citing at column seven, lines 35 through 41 -- it says right at line 35. Step
8 340 in figure three is controlled out by the car kit.

9 So, we are saying that our control is by essentially the phone. What
10 the Examiner has relied on is something by the car kit.

11 JUDGE HAIRSTON: Granted that most of this reference is devoted
12 to the car kit being the master and controlling everything -- but if you
13 continue reading in the second paragraph of column eight, there's one
14 instance whereby the handset is listening for something coming from the car
15 unit and if it doesn't receive it within a certain amount of time then the
16 headset can disconnect, and that's what you're claiming.

17 MR. KULBASKI: It is true that column eight has that feature but
18 that's described with respect to park mode and the reference doesn't say what
19 happens when there's a phone conversation occurring and how the
20 disconnect occurs in that time period.

21 JUDGE HAIRSTON: The claim is pretty broad. I mean, it doesn't
22 limit what kind of mode you're in. The claim is not limited to a specific
23 mode. Cell phones can go into quite a few different modes, and, in this park
24 mode, if you read that second paragraph in column eight, it says, if the
25 headset does not receive a message for some period of time, it automatically

1 deactivates the hands-free mode. That's pretty much on point to what you're
2 claiming; isn't it?

3 MR. KULBASKI: Again, that quotation is limited to the park mode
4 and if the phone is being operated and used in ordinary mode and a person
5 walks away.

6 JUDGE HAIRSTON: Granted; but the claim is really not limited to a
7 specific hands-free mode. It's still hands-free. Even in the park mode, it's
8 still hands-free. Granted this reference gives the master control to the car
9 unit in every instance, but this one snippet inside Larsson gives the headset
10 control that one instance, and we think it reads on it.

11 Granted your claim is broad and granted Larsson gives the car unit
12 complete control but there's this one instance there. The cell unit actually
13 controls.

14 MR. KULBASKI: I have nothing further.

15 JUDGE HAIRSTON: Okay. Thank you, counsel.

16 MR. KULBASKI: Thank you very much.

17 (Whereupon, at approximately 10:55 a.m., the proceedings were
18 concluded.)